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VENTURA UNIFIED SCHOOL DISTRICT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

J.R. (a minor, by and through his
mother, MARY PEREZ)

Plaintiffs,

v.

VENTURA UNIFIED SCHOOL
DISTRICT,

Defendant.

CASE NO. 2:22-cv-02717 DSF
(MARx)

**VENTURA UNIFIED SCHOOL
DISTRICT'S ANSWER TO
PLAINTIFF'S COMPLAINT**

Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, defendant Ventura Unified School District ("Defendant" or "VUSD") answers plaintiff Mary Perez's ("Plaintiff") Complaint for Partial Review of Administrative Due Process Decision and Relief Under the Individuals with Disabilities Education Act [20 U.S.C. § 1400 *et seq.*] ("Complaint"). If an averment is not specifically admitted, it is hereby denied.

1 factual averments to which it must respond. To the extent any factual averments are
2 contained within Paragraph 7, Defendant specifically denies each and every one of
3 them.

4 **PROCEDURAL HISTORY**

5 8. In response to Paragraph 8 of the Complaint, Defendant admits Plaintiff
6 filed a complaint with the OAH on April 8, 2021, and that he amended his
7 complaint on August 2, 2021. Defendant further admits that Plaintiff's OAH
8 complaint was assigned case number 2021040283.

9 9. In response to sub-paragraph 8a of the Complaint, Defendant denies
10 that at trial Plaintiff raised the issue whether VUSD failed to assess J.R. in all areas
11 of suspected disability, beginning in 2012. Defendant further responds that the
12 issues Plaintiff raised at the OAH hearing are specifically contained in the OAH
13 Decision, and to the extent Plaintiff purports to expand on those issues, Defendant
14 denies each and every such allegation.

15 10. In response to sub-paragraph 8b of the Complaint, Defendant denies
16 that at trial Plaintiff raised the issue whether VUSD prevented his parents from
17 being able to participate in informed decision-making regarding his education by
18 withholding the fact that J.R. was suspected of having, and/or demonstrated
19 symptoms of, autism and related disabilities, since 2012. Defendant further
20 responds that the issues Plaintiff raised at the OAH hearing are specifically
21 contained in the OAH Decision, and to the extent Plaintiff purports to expand on
22 those issues, Defendant denies each and every such allegation.

23 11. In response to sub-paragraph 8c of the Complaint, Defendant denies
24 that at trial Plaintiff raised the issue whether VUSD prevented Plaintiff's parents
25 from being able to participate in informed decision-making regarding his education,
26 by asserting it had assessed him in all areas of suspected disability, inclusive of
27 autism eligibility, when it hadn't, since 2012. Defendant further responds that the
28 issues Plaintiff raised at the OAH hearing are specifically contained in the OAH

1 Decision, and to the extent Plaintiff purports to expand on those issues, Defendant
2 denies each and every such allegation.

3 12. In response to sub-paragraph 8d of the Complaint, Defendant responds
4 that this allegation as worded is overly broad, vague and ambiguous such that
5 Defendant is unable to admit or deny the allegation as stated, and on that basis
6 specifically denies the allegation herein. Defendant further responds that the issues
7 Plaintiff raised at the OAH hearing are specifically contained in the OAH Decision,
8 and to the extent Plaintiff purports to expand on those issues or include additional
9 claims of failure, deficiency or wrongdoing related to J.R.'s IEPs, Defendant denies
10 each and every such allegation.

11 13. In response to sub-paragraph 8e of the Complaint, Defendant admits
12 that at trial Plaintiff raised the issue whether VUSD failed to implement J.R.'s IEP
13 dated January 15, 2020 between April 13, 2020 through June 10, 2021, during the
14 COVID-19 school closures. To the extent Plaintiff's allegations herein purport to
15 include additional claims of implementation failure, deficiency, or wrongdoing
16 related to J.R.'s IEPs, Defendant denies that any such issues were raised at the OAH
17 hearing.

18 14. In response to Paragraph 9 of the Complaint, Defendant admits that an
19 administrative Decision was rendered on January 24, 2022.

20 15. In response to sub-paragraph 9a of the Complaint, Defendant admits
21 that the OAH determined VUSD had failed to assess J.R. for autism and pragmatic
22 language from April 8, 2019, to August 10, 2021. Defendant denies that the OAH
23 determined VUSD had failed to assess J.R. "in all areas of suspected disability,"
24 other than as admitted herein.

25 16. In response to sub-paragraph 9b of the Complaint, Defendant admits
26 that the OAH determined VUSD failed to offer appropriate goals in J.R.'s January
27 15, 2020 IEP to address work completion, attention, and pragmatic language. To the
28 extent Plaintiff alleges the OAH determined any other failures to offer appropriate

1 goals in J.R.'s January 15, 2020, IEP, Defendant denies that OAH determined
2 VUSD committed any other failures to offer appropriate goals in J.R.'s January 15,
3 2020, IEP.

4 17. In response to sub-paragraph 9c of the Complaint, Defendant admits
5 that the OAH determined VUSD failed to offer appropriate goals in J.R.'s February
6 17, 2021 IEP to address work completion, attention, and pragmatic language. To
7 the extent Plaintiff alleges the OAH determined any other failures to offer
8 appropriate goals in J.R.'s February 17, 2021, IEP, Defendant denies that OAH
9 determined VUSD committed any other failures to offer appropriate goals in J.R.'s
10 February 17, 2021, IEP.

11 18. In response to sub-paragraph 9d of the Complaint, Defendant admits
12 that the OAH determined VUSD failed to offer appropriate services in J.R.'s
13 January 15, 2020 IEP to address work completion, attention, pragmatic language
14 and reading/dyslexia. To the extent Plaintiff alleges the OAH determined any other
15 failures to offer appropriate services in J.R.'s January 15, 2020, IEP, Defendant
16 denies that the OAH determined VUSD failed to offer any other appropriate services
17 in J.R.'s January 15, 2020, IEP.

18 19. In response to sub-paragraph 9e of the Complaint, Defendant admits
19 that the OAH determined VUSD failed to offer appropriate services in J.R.'s
20 February 17, 2021 IEP to address work completion, attention, pragmatic language
21 and reading/dyslexia. To the extent Plaintiff alleges the OAH determined any other
22 failures to offer appropriate services in J.R.'s February 17, 2021, IEP, Defendant
23 denies that the OAH determined VUSD failed to offer any other appropriate services
24 in J.R.'s February 17, 2021, IEP.

25 20. In response to sub-paragraph 9f of the Complaint, Defendant admits
26 that the OAH determined VUSD failed to implement J.R.'s January 15, 2020, IEP
27 during the COVID-19 school closure by failing to implement 17.5 (seventeen and
28 one-half) hours per week of J.R.'s specialized academic instruction, and 2 (two)

1 hours per month of group speech and language services for 8 (eight) school weeks
2 from April 13, 2020 to June 11, 2020. Defendant further admits that the OAH
3 determined that VUSD did not implement 3.8 hours per week of J.R.'s specialized
4 academic instruction minutes from the January 15, 2020, IEP for 29 (twenty-nine)
5 school weeks, from August 18, 2020 to April 1, 2021. To the extent Plaintiff
6 attempts to expand on the OAH determination as set forth in the January 24, 2022
7 Decision, Defendant denies each and every such allegation.

8 21. In response to Paragraph 10 of the Complaint, Defendant admits that
9 the OAH issued an order compelling VUSD to reimburse Plaintiff an amount not to
10 exceed \$19,000.00 in compensatory education services. Defendant denies that such
11 reimbursement amount was estimated to account for 154 hours. Defendant admits
12 that the OAH issued an order compelling VUSD to pay, or reimburse, for Dr. BJ
13 Freeman's June 2021 evaluation of J.R. in the amount VUSD and Dr. Freeman had
14 previously agreed to as stated under VUSD's special education local plan area
15 guidelines for psychoeducational evaluation. Defendant further admits that the
16 OAH issued an order compelling VUSD to pay or reimburse for Karen Schnee's
17 June 2021 independent speech and language evaluation of J.R. in the amount of
18 \$3,500.00. To the extent Plaintiff attempts to expand the allegations in this
19 paragraph to include any other ordered relief, Defendant denies each and every such
20 allegation.

21 22. In response to Paragraph 11 of the Complaint, Defendant responds that
22 Plaintiff has mischaracterized the OAH findings to such an extent as to render it
23 impossible to admit or deny the allegations herein. As to the allegations that can be
24 discerned in the context of the OAH Decision rendered on January 24, 2022,
25 Defendant admits that the OAH rejected Plaintiff's claims that the statute of
26 limitations had been tolled, and also determined that Defendant did not deny Student
27 a FAPE by, amongst other things (1) "failing to assess in all areas of disability,
28 specifically autism and other health impairment in May 2012;" (2) "failing to assess

1 in all areas of disability, specifically autism, in March 2015;” (3) “failing to assess
2 in all areas of disability, specifically autism, in February 2018”; (4) failing to assess
3 in all areas of disability, specifically other health impairment from April 8, 2019 to
4 August 10, 2021;” and (5) misrepresenting or failing to disclose material facts.
5 Defendant further admits that the OAH determined Plaintiff was owed an amount up
6 to \$19,000.00 calculated at 152 hours of compensatory education services. To the
7 extent Plaintiff attempts to expand upon or alter the determinations of the OAH as
8 set forth in the January 24, 2022, Decision, Defendant denies each and every such
9 allegation.

10 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

11 23. Defendant admits that Plaintiff exhausted his administrative remedies
12 only as to the specific issues raised and litigated in the OAH Case No. 2021040283.
13 Defendant denies that Plaintiff exhausted his administrative remedies as to any
14 issues not specifically raised and litigated in the OAH Case No. 2021040283.
15 Defendant further denies that Plaintiff is an aggrieved party, denies that Plaintiff is
16 the prevailing party, and further denies that Plaintiff is entitled to recover any
17 attorneys’ fees.

18 **FIRST CAUSE OF ACTION**

19 (Violation of IDEA 20 U.S.C. §1400 *et seq.*, and the California Education Code §
20 56500 *et seq.*)

21 24. In response to Paragraph 13 of the Complaint, Defendant realleges its
22 averments and denials in paragraphs 1 through 12 as if fully set forth herein.

23 25. In response to Paragraph 14 of the Complaint, Defendant denies each
24 and every allegation herein.

25 26. In response to Paragraph 15, Defendant denies each and every
26 allegation therein.

SECOND CAUSE OF ACTION

(Prevailing Party Attorneys' Fees Under IDEA and Special Education Law)

27. In response to Paragraph 16 of the Complaint, Defendant realleges its averments and denials in paragraphs 1 through 15 as if fully set forth herein.

28. In response to Paragraph 17 of the Complaint, Defendant denies each and every allegation therein.

29. In response to Paragraph 18 of the Complaint, Defendant denies each and every allegation therein.

PRAYER FOR RELIEF

30. Defendant denies that Plaintiff is entitled to any of the relief sought in the prayer for relief or for any other remaining allegations.

AFFIRMATIVE DEFENSES

Defendant pleads the following separate defenses. Defendant reserves the right to assert additional affirmative defenses that may be proper.

Defendant, without prejudice to any other position taken herein, and by way of further answer and defense to the Complaint, asserts the following:

AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE ALLEGATIONS OF THE COMPLAINT, it is alleged that the COMPLAINT and each and every claim therein fails to state a claim upon which relief may be granted, and Plaintiff fails to state any cause of action permitted under the law.

AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE ALLEGATIONS OF THE COMPLAINT, it is alleged that Plaintiff has failed to exhaust required administrative remedies.

AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE ALLEGATIONS OF THE COMPLAINT, Defendant asserts that the relief sought by Plaintiff is barred and/or reduced in whole or in part by the degree of success rule and notions of fairness and equity.

AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE

1 ALLEGATIONS OF THE COMPLAINT, Defendant asserts that Plaintiff is barred
2 and precluded from obtaining the relief sought under the statutory grounds for
3 denial and/or reduction of attorneys' fees and costs under the IDEA, pursuant to
4 20 U.S.C. § 1415(i)(3)(C)-(D), (F).

5 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
6 ALLEGATIONS OF THE COMPLAINT, Defendant alleges that Plaintiff is
7 barred and precluded from recovering attorneys' fees and costs beyond the dates
8 upon which the District transmitted a more favorable statutory offer of settlement
9 pursuant to 20 U.S.C. § 1415(i)(3)(D)(i)(I)-(III).

10 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
11 ALLEGATIONS OF THE COMPLAINT, Defendant alleges that Plaintiff is not
12 entitled to a remedy because her and/or her attorneys' actions have been
13 unreasonable or other equitable factors preclude recovery.

14 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
15 ALLEGATIONS OF THE COMPLAINT, Defendant alleges that Plaintiff is not
16 entitled to a remedy because the Complaint and underlying action are frivolous,
17 unreasonable, or without foundation and/or Plaintiff continued to litigate after the
18 litigation clearly became frivolous, unreasonable, or without foundation.

19 AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
20 ALLEGATIONS OF THE COMPLAINT, Defendant alleges that Plaintiff is not
21 entitled to a remedy because the Complaint and underlying action were presented
22 for an improper purpose, such as to harass, to cause unnecessary delay, or to
23 needlessly increase the cost of litigation.

24 AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
25 ALLEGATIONS OF THE COMPLAINT, Defendant alleges that Plaintiff is
26 precluded from recovering costs not specifically authorized by the IDEA, including
27 for expert witnesses, under *Arlington Central School District Board of Education v.*
28 *Murphy*, 548 U.S. 291 (2006).

1 AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
2 ALLEGATIONS OF THE COMPLAINT, Defendant alleges that Plaintiff is
3 precluded from recovering the relief sought by virtue of the doctrine of estoppel.

4 AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
5 THE ALLEGATIONS OF THE COMPLAINT, Defendant alleges that Plaintiff is
6 precluded from recovering the relief sought by virtue of the doctrine of unclean
7 hands.

8 AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
9 ALLEGATIONS OF THE COMPLAINT, Defendant alleges that Plaintiff is not
10 entitled to an award of attorneys' fees against Defendant to the extent he is not the
11 prevailing party in the underlying due process proceedings and Defendant prevailed
12 on the majority of issues in the underlying due process proceeding, and further, that
13 any attorneys' fees awarded to Plaintiff must be reduced pursuant to 20 U.S.C. §
14 1415(i)(3)(D) and 34 C.F.R. § 300.517(c)(2)(i).

15 AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
16 THE ALLEGATIONS OF THE COMPLAINT, Defendant alleges that Plaintiff's
17 claims are barred by the applicable statutes of limitations, including but not limited
18 to 20 U.S.C. § 1415(f)(3)(C), (D), and California Education Code § 56505(l), and
19 legal authority addressing said statutes.

20 WHEREFORE, having answered the Complaint, Defendant prays for
21 judgment as follows:

- 22 1. That Plaintiff takes nothing by way of the Complaint;
23 2. That Defendant be awarded its reasonable attorney's fees and costs; and
24 3. For such other and further relief as the Court deems just and proper.

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DATED: May 19, 2022

HATCH & CESARIO

By: _____ /s/

Melissa Hatch
Attorneys for Defendant
Ventura Unified School District

DATED: May 19, 2022

MC LAW GROUP

By: _____ /s/

Molly Thurmond
Attorneys for Defendant
Ventura Unified School District